

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7467 OF 1990

WITH

SPECIAL CIVIL APPLICATIONS NO.1074 OF 1991,
4983 OF 1992, 5098 OF 1993 & 11440 OF 1994

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SMT.SHAKUNTALABEN HARIPRASAD VYAS & ORS.
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

Sp.C.A. 7647 of 1990:

MR KETAN DAVE for Petitioners
MR SR DIVETIA for Respondents No.1 & 2
None present for other Respondent

Sp.C.A. 1074 of 1991:

MR KETAN DAVE for Petitioners
MR SR DIVETIA for Respondents No.1
None present for other Respondents

Sp.C.A. 4983 of 1992:

MR KETAN DAVE for Petitioners
MR SR DIVETIA for Respondents No.1, 2 & 4
None present for other Respondent No.3

Sp.C.A. 5098 of 1993:

MR KETAN DAVE for Petitioners
MR SR DIVETIA for Respondents No.1 & 2
None present for Respondents No.3 & 4

Sp.C.A. 11440 of 1994:

MR SHIRISH JOSHI for Petitioners
MR KETAN DAVE for Respondent No.1
None present for other Respondents

Coram: S.K. Keshote,J
Date of decision:15/08/1997

C.A.V. JUDGMENT

#. As in all these Special Civil Applications, a common legal question has been raised, the same are being disposed of by this common order.

#. Special Civil Applications No.5098 of 1993 and 11440 of 1994 are cross petitions and as such, I consider it to be appropriate to first give out facts of these cases in detail.

#. Special Civil Application No.5098 of 1993:
The petitioners therein were appointed as primary teachers in the school run by respondent No.4 on 2nd July 1984. The petitioners and other primary teachers raised their demand before the management for payment of salary and allowances as per the pay scale prescribed by the

Government in the year 1990. In this connection the petitioner No.1 had filed an application, being Application No.91 of 1991 against the management before the Gujarat Primary Education Tribunal at Ahmedabad. The Tribunal had directed the management, vide its order dated 26.6.91, to make payment of salary and allowances as per the pay scale prescribed by the Government. The petitioner No.1 was served with a chargesheet dated 20th July 1990 issued by the management. She filed a reply to the chargesheet. An inquiry has been held. However, the District Education Officer has declined to approve the management's proposal for termination of services of the 1st petitioner vide its order dated 29th August 1992. Despite of the aforesaid order of the District Education Officer, the respondent No.4 terminated the services of petitioner No.1 vide order dated 3.9.92 and the same has been challenged by her by filing Application No.215 of 1992 before the Tribunal. The petitioner submitted that the management had from time to time given threat to the teachers to close down the school. Proposals were sent by respondent No.4 to District Education Officer for closing down standard I & II of the school. The District Education Officer, Ahmedabad, has heard, both the teachers and the management on the proposal of the management to close down standard I & II of the school. The petitioners state that they have come to know that the District Education Officer has not recommended closure of standard I & II of the respondent-school, but the Government granted permission to respondent-management to close down standard I & II of its school vide its order dated 9.2.93 and it was stated to be contrary to the recommendations of the District Education Officer, Ahmedabad. The petitioners have further stated that they are not aware of inquiry having been made by the Government as contemplated under clause 5 of Schedule F of Bombay Primary Education Rules, 1949 (hereinafter referred to as 'Rules 1949'). Further grievance has been made that before passing order dated 9.2.93 the petitioners were not given any notice or opportunity of hearing by the Government and as such, the order is contrary to principles of natural justice. Reference has also been made by petitioners in Special Civil Application to the agreement arrived at by the Government with the Gujarat State Federation of Primary Teachers' Association. That agreement provides in case of closure of school or classes, that the teachers declared surplus are to be absorbed in other primary schools. So in pursuance of the said agreement what the petitioners contended that after decision of the Government granting permission to respondent No.4 for closing down standards I & II, the petitioners should

have been absorbed in other schools. On merits also, the petitioners submitted that the reasons assigned by the management for grant of permission for closing of standard I & II are not germane. These are only manufactured reasons with a motive to get rid of petitioners. In this Special Civil Application, the petitioners have challenged the order of the respondent-State dated 9.2.93.

#. Special Civil Application No.11440 of 1994:

After the order dated 9.2.93 of the Government, the management has approached the Administrative Officer, City Primary Education Committee, Ahmedabad, for grant of approval to relieve the two teachers, the respondents No.1 and 2 in this petition, from the services. The Administrative Officer, City Primary Education Committee, under its order dated 15th February 1994, declined to accept the proposal of the management, the petitioner herein for relieving the respondents No.1 and 2 from services, for the reasons that in view of Rule 106(5), the management of the primary school cannot curtail teaching staff by closing down classes or their schools without obtaining advance written permission of the authorized officer (District Education Officer, Ahmedabad City), which has not been taken in the present case. Another ground has been given that both the teachers have approached this Court by filing Special Civil Application No.5098 of 1993, which matter is sub-judice before this Court. This petition has been filed by the petitioner-management challenging the aforesaid order of the Administrative Officer, City Primary Education Committee, Ahmedabad.

#. Special Civil Application No.7467 of 1990:

Two primary teachers of the school run by respondent No.3-management filed this Special Civil Application against the order of the State Government, annexure 'C', dated 25th September 1990, under which it has granted permission to the management to close down standards V, VI & VII. Further incidental prayers have also been made. The services of the petitioners came to be terminated earlier to grant of permission of closing down the aforesaid classes and that matter has been taken up by petitioners before the Tribunal, where interim relief has been granted. In this case also, the petitioners have raised identical grounds which have been raised in Special Civil Application No.5098 of 1993.

#. Special Civil Application No.1074 of 1991:

The petitioners, primary teachers, in all two, filed this Special Civil Application against the order of the

Government dated 31.1.91 granting permission to the management of the school to close down classes of standard V, VI and VII of its school and other consequential prayers have been made for protection of their services. In this case also, prior to grant of permission of closure of classes, the management has terminated the services of the petitioners and that matter has been taken up by the teachers before the Tribunal where interim relief has been granted. In this case, the petitioners, primary teachers have raised same contentions challenging the order of respondent-State dated 31.1.91, as raised in earlier Special Civil Applications by primary teachers.

#. In this case, reference may have to the order of this Court dated 2.7.92 which reads as under:

The petitioners are satisfied so far as erstwhile employer respondent Nos.3 and 4 are concerned. Therefore the petition would not survive against them as fairly conceded by Mr.Ketan Dave, L.A. for the petitioner and therefore, he wants to delete their names. However the L.A. maintain that the petition does survive against the State government on order Annex.D as the question of absorption is still outstanding. The question requires examination. Rule to be heard with SCA 7467/90.

So the petitioners have settled their claim with the management and this writ petition has been stated to be not surviving against respondent No.3 and 4. The names of these respondents have also been deleted. But what is stated that the petition survives to the extent of absorption of these petitioners elsewhere by the respondent-State.

#. Special Civil Application No.4983 of 1992:

The petitioners, primary teachers, in all 14 in number, are challenging the order of the respondent-State dated 26th June 1992 under which the management of the primary school has been granted permission for closing down the school. The petitioners have approached the Tribunal apprehending their termination where they have been protected by way of interim relief. On receipt of order dated 26th June 1992 of the Government, the management issued termination orders against the petitioners No.2 and 4 who had been spared and it has reiterated their action of termination of services of rest of the petitioners. So prayer has also been made for

restraining management from terminating their services. The other grounds raised by the petitioners in this Special Civil Application are common.

#. The learned counsel for petitioners, in this Special Civil Application, has filed a copy of compromise which has been entered into between the petitioners and the management, and he submitted that in view of the compromise, now nothing substantial survives and this Special Civil Application may be disposed of as not pressed. Shri Yatin Soni has put appearance on behalf of management and he has supported this compromise. In view of this compromise and the statement made by learned counsel for the petitioners, the Special Civil Application No.4983 of 1992 is dismissed as withdrawn.

##. The learned counsel for primary teachers raised twofold contentions in these matters. Firstly, it is contended that the grant of permission by the Government for closing down some of the classes or schools adversely affects the rights of teachers and as such before passing such orders, the concerned teachers should have been given notice and opportunity of hearing. Principles of natural justice, in such cases, have to be followed. Even if it is taken to be administrative action, then too, by this action when the civil rights of the petitioners-teachers, herein, are affected, it is obligatory on the part of authority to follow principles of natural justice, which has not been done in the present case. It has next been contended that even if the State Government grants sanction for closure of classes or schools as a whole, then as per the settlement arrived into by the Government with the Federation of primary teachers, the surplus teachers should have been absorbed in other schools, which has also not been done in the present case.

##. On the other hand, Shri Shirish Joshi, learned counsel appearing for management in two petitions, contended that the first contention raised is wholly devoid of any substance. He has made a reference to clause 5 of Schedule F of the 'Rules 1949' and submitted that the authorized officer has given hearings to the affected persons and under this clause, the Government has acted upon the report submitted and only the management is required to be given opportunity of hearing and not the teachers. So far as the second contention is concerned, the counsel for management has not very seriously opposed it as he felt contended to say that it is a matter between the Government and the primary teachers whose services are terminated.

##. Shri S.R.Divetia, learned counsel for Government contended that opportunity of hearing is not required to be given to the petitioners before passing the orders of sanction of closure of classes or schools. Clause 5 of Schedule F of the aforesaid Rules 1949 only provides for giving opportunity to the management. It has next been contended that it cannot be said that the order has been passed without hearing the primary teachers. The authorized officer has heard the primary teachers. So far as second contention of the learned counsel for primary teachers is concerned, Shri Divetia submitted that even if an agreement has been entered into between the Government and the Federation of primary teachers, then too, it is not enforceable by this Court, sitting under Article 226 of the Constitution. However, Shri Divetia very fairly submitted that still if the petitioners consider that they have some right under the alleged agreement, then it is always open for them to approach the government and if they so approach, the matter will be considered in accordance with law and they will be given benefits for which they are found entitled by the Government.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

##. Clause 5 of Schedule F of the Rules 1949 reads as under:

5. Closure of School or Reduction in the total number of classes -- (1) No management of recognised private primary school shall effect any reduction in the total number of classes in its school or close down the school without the prior permission in writing of the Government. For this purpose the management shall have make an application to the Authorised Officer atleast six month before the date from which it intends to reduced the number of classes or close down the school. On receipt of such application, Authorised Officer shall hear the management and forward such application with his remarks to Government through the Director of Primary Education. The Government may in such manner as may be deemed necessary make such further inquiry as it may appear to it to be necessary and shall decide whether the application should be granted or refused either in whole or in part.

##. This provision contemplates of filing of the

application by the management where it proposes to reduce the number of classes or to close down the school, to the authorized officer, atleast six months before the date from which it intends to reduce the number of classes or close down school. On receiving such application, the authorized officer shall hear the management and forward such application with his remarks to the Government through the Director of Primary Education. The Government after receipt of the application with remarks of the authorized officer may make further inquiry as it may appear to be necessary and then decide the application either grant or refuse it in whole or in part. The teachers, if we strictly go by this clause, are even not required to be heard by the authorized officer. However, in the present case, there is no dispute that the authorized officer, after receiving the application of the management for reducing number of classes or closing down the school, has heard the affected teachers. However, it is also a fact that whatever recommendations made by the authorized officer were not made known to such teachers. It is true that clause 5 nowhere provides for giving an opportunity of hearing to the teachers, but it is equally true that the reduction of number of classes or closing down the school by the management on sanction thereof by the Government, results in termination of services of teachers. Termination of services of teachers is certainly a serious thing and it affects the very basic means of livelihood. When the consequence of sanction of reduction of number of classes or closure of school result in termination of services of teachers, then it is very severe and serious thing. Before such decision is taken, the person affected, i.e. teacher should be given an opportunity of hearing. The relevant clause though contemplates of giving hearing only to the management by the authorized officer and even not by the Government, but in the case where the Government sanctions reduction of number of classes or closure of school, basic principles of natural justice have to be followed so that before teachers are asked to go home or rendered them jobless or unemployed at a stage where some of them would have even crossed the upper age limit for fresh appointment, they should have given a reasonable opportunity of hearing. The consequences of such orders of sanction by the Government are more important and serious than what the clause contemplates. It is a settled law that where even the powers exercised by the Government are administrative but the consequences thereof effect on civil rights of citizens, in the present case, consequences thereof results in termination of services, the authority should have adhered to the

principles of natural justice. The authorized officer, though in this case heard the petitioners but what ultimately he reported was no known to them. In some of the petitions, the petitioners-teachers have come up with the case that the authorized officer has not recommended for reduction of number of classes or closing down school, but still the Government has granted the sanction. In such matters, the action of the State Government, which is a welfare State, should have been very fair and reasonable. There should be a transparency in its actions. More so when it is dealing with the right of livelihood of the teachers then not only they should have been granted opportunity of hearing, but if the authorized officer has recommended for reduction of number of classes or closing down school, then that report should also have been made available to the affected teachers to afford them opportunity to controvert the same in advance. What has been stated in clause 5 of Schedule F of the Rules 1949 cannot be construed in the same manner. The contention of learned counsel for respondent-management, if accepted, then this court will put its seal on the procedure aforesaid to be followed and the same will be arbitrary, as the Government will then be at liberty to pass the orders which may prejudicially affect the very basic right of livelihood of many of the teachers without hearing the real affecting persons.

##. The net result of the aforesaid discussion is that it is hereby declared that as and when the State Government considers the application by managements for reduction of number of classes or closure of schools under clause 5 of Schedule F of Rules 1949, then the teachers likely to be affected by the said order to be passed on such application, should be given a notice and opportunity of hearing and further they should be furnished a copy of the comments of the authorised officer sent by him on the application of the management to the Government, and only thereafter, the order on the application for reduction of number of classes or closure of school shall be passed. So far as the second contention of learned counsel for the petitioner-teachers that as per the agreement arrived at between the Government and their Federation that the surplus teachers, so declared on termination of their services by the school to which permission has been granted for reduction of number of classes or closure of schools is concerned, it is suffice to say that in such matters, it is always advisable for the affected persons to approach the Government first and not directly to this Court. In this case, even that stage has not been allowed to be

reached by the primary teachers as they have filed Special Civil Applications before this Court challenging the order of the State Government under which sanction has been granted for reduction of number of classes or closure of schools. In case if such eventuality arises, then whosoever primary teacher herein is affected, may approach the State Government for his/her absorption in some other school as per the alleged entitlement under the agreement aforesaid and the State Government shall consider the case of such affected teacher in accordance with law.

##. In the result, the Specail Civil Application No.5098 of 1993 is allowed and the order of the Government dated 9th February 1993, annexure 'A' to the petition, is hereby quashed and set aside. The Special Civil Application No.11440 of 1994, in view of acceptance of Special Civil Application No.5098 of 1993, has become infructuous and the same is dismissed as having become infructuous.

##. The petitioners-teachers in Specail Civil Application No.1074 of 1991 have already settled the matter with the management. The only grievance of the petitioners in this Special Civil Application which now survives is their right under the alleged agreement in between the Government and their Federation. So this Specail Civil Application, so far it challenges the order of the Government dated 31st January 1991, annexure 'B', no more survives. However, so far as other prayers of petitioners are concerned, they are at liberty to approach the Government for their claim under the aforesaid agreement and in case the petitioners so approach, the Government shall consider the same in accordance with law.

##. The Specail Civil Application No.7467 of 1990 is allowed and the order of the Government dated 25th September 1990, annexure 'C', is hereby quashed and set aside. The petitioners herein are also at liberty to approach the State Government in case any of their grievances absorption etc. if survives, and the State Government, in case the petitioners so approach, shall consider their cases in accordance with law.

##. However, it is made clear that decision of this Court in these petitions will not come in way of the Government to pass fresh orders under clause 5 of Schedule F, after giving notice and opportunity of hearing to the affected teachers.

##. Rule in Special Civil Applications No.5098 of 1993, 1074 of 1991 and 7467 of 1990 made absolute to the extent aforesaid. Rule discharged in Special Civil Applications No.11440 of 1994 and 4983 of 1992. No order as to costs in all these Special Civil Applications. Interim relief, if any, granted in Special Civil Applications No.11440 of 1994 and 4983 of 1992, stands vacated.

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